

INTRODUCED: 05/17/2010

REFERRED TO: Economic Development Committee

SPONSOR: Councillor Cardwell

DIGEST: authorizes the City to issue one or more series of Economic Development Tax Increment Revenue Bonds in a maximum aggregate principal amount not to exceed \$25,500,000 for the Dow Agro Sciences global headquarters and research and development facilities for expansion and improvements at 9330 Zionsville Road (District 1)

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SOURCE:

Initiated by: Economic Development Commission  
Drafted by: James Crawford, Bond Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: \_\_\_\_\_

Date: May 12, 2010

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CITY-COUNTY SPECIAL ORDINANCE NO. \_\_\_\_\_, 2010

A SPECIAL ORDINANCE authorizing the City of Indianapolis to issue one or more series of its City of Indianapolis, Indiana Economic Development Tax Increment Revenue Bonds, Series 2010 A (with such further series or other designation as determined to be necessary), in a maximum aggregate principal amount not to exceed \$25,500,000 (the "Bonds") and approving and authorizing other actions in respect thereto.

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Indianapolis, Indiana (the "City") is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, Dow AgroSciences LLC or a subsidiary or affiliate thereof (collectively, the "Company") desires to finance certain additions or improvements to the Company's global headquarters and research and development facilities in the City, including all or any portion of: (a) the acquisition (by purchase, lease or other method), construction and equipping of new offices and equipment; (b) the acquisition (by purchase, lease or other method), construction and equipping of new greenhouse buildings and facilities and equipment; (c) the acquisition (by purchase, lease or other method), construction and equipping of new research and development buildings and facilities and equipment; (d) the expansion, renovation, rehabilitation and equipping of existing offices, greenhouse facilities, research and development buildings and facilities and equipment; and (e) the acquisition (by purchase, lease or other method), construction, expansion, renovation, rehabilitation and equipping of any functionally related or similar buildings and facilities and equipment (clauses (a) through and including (e), collectively, the "Project") and to pay related costs, all of which will be located at or near 9330 Zionsville Road, Indianapolis, Indiana 46248, in Council District 1 of the City-County Council of the City of Indianapolis and of Marion County, Indiana (the "City-County Council"), and will also be located in the 86th Street and Zionsville Road Economic Development Allocation Area (the "Allocation Area") previously created by the Metropolitan Development Commission of Marion County, Indiana, acting as the Redevelopment Commission of the City; and

WHEREAS, the Company has advised the Indianapolis Economic Development Commission (the "Commission") and the City concerning the Project, and requested that the City issue one or more series of its taxable or tax-exempt Economic Development Tax Increment Revenue Bonds, Series 2010 A (with such further series or other designation as determined to be necessary), in an aggregate principal amount

not to exceed Twenty-Five Million Five Hundred Thousand Dollars (\$25,500,000) (the "Bonds") under the Act and make the proceeds of such Bonds available to the Company for the purpose of financing a portion of the Project; and

WHEREAS, the Commission has rendered a report concerning the proposed financing or refinancing of economic development facilities for the Company and the Metropolitan Development Commission of Marion County, Indiana, has been given the opportunity to comment thereon; and

WHEREAS, the Commission after a public hearing held on May 5, 2010, pursuant to Section 24 of the Act and certain provisions of the Internal Revenue Code of 1986, and the rules promulgated thereunder, as amended (the "Code"), found that the financing of the Project complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and welfare of the City; and

WHEREAS, the Commission has determined that the financing will not have an adverse competitive effect or impact on any similar facility of facility of the same kind already constructed or operating in the same market area or in or about Marion County, Indiana; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance a portion of the Project by issuing the Bonds; and

WHEREAS, the Act provides that such bonds may be secured by a trust indenture between an issuer and a corporate trustee; and

WHEREAS, the City intends to issue the Bonds consistent with the terms of this Ordinance and pursuant to a Trust Indenture, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Indenture"), by and between the City and a corporate trustee to be selected by the City (the "Trustee"), in order to obtain funds necessary to provide for the financing of a portion of the Project in accordance with the terms of a Financing Agreement, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Financing Agreement"), by and between the City and the Company with respect to Bonds and the Project; and

WHEREAS, pursuant to the Financing Agreement, the Company will make certain representations, warranties and commitments with respect to the Project which will permit the City to derive incremental real and personal property tax revenues from the Company's site of operations within the Allocation Area which, together with additional incremental property tax revenues derived from the Allocation Area if required, will be sufficient to pay principal of and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds, as further described herein; and

WHEREAS, no member of the City-County Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the City-County Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

WHEREAS, there has been submitted to the Commission for its approval forms of the Indenture (including a form of the Bonds) and the Financing Agreement (and together with the Indenture, collectively, the "Financing Documents"), and a form of this proposed Ordinance, which were incorporated by reference in the Commission's Resolution adopted on May 5, 2010, which Resolution has been transmitted hereto; and

WHEREAS, on September 5, 1990, the Metropolitan Development Commission of Marion County, Indiana, acting as the Redevelopment Commission of the City of Indianapolis, Indiana (the "Redevelopment Commission") adopted its Resolution No. 90-224 (the "Declaratory Resolution") declaring an area of the City as the "86<sup>th</sup> Street and Zionsville Road Economic Development Area" (the "Economic Development Area") to be an "economic development area" within the meaning of IC 36-7-15.1, as amended, designating the entire Economic Development Area as an "allocation area" for

purposes of the IC 36-7-15.1-26, and approving the "86<sup>th</sup> Street and Zionsville Road Economic Development Area Plan" for the Economic Development Area (the "Plan"); and

WHEREAS, on October 3, 1990, following a public hearing, the Redevelopment Commission adopted its Resolution No. 90-245 modifying and confirming the Declaratory Resolution and modifying and confirming the Plan (the Declaratory Resolution, as so confirmed, the "Original Declaratory Resolution"); and

WHEREAS, on April 7, 2010, the Redevelopment Commission adopted its Resolution 2010-B-004 (the "Amendatory Resolution"), which amended the Original Declaratory Resolution and the Plan to (1) designate the Company as a "designated taxpayer" for purposes of Section 26.2 of the Act, and (2) add certain projects to the Plan (the foregoing items (1) through (2), collectively, the "Plan Amendments"); and

WHEREAS, pursuant to IC 36-7-15.1-9, the Redevelopment Commission has submitted the Amendatory Resolution and Plan Amendments to the City-County Council for its approval thereof; and

WHEREAS, the City expects to pay for certain costs of the Bonds or costs related to the Project (collectively, the "Expenditures") prior to the issuance of the Bonds, and to reimburse the Expenditures with proceeds received by the City upon the issuance of the Bonds; and

WHEREAS, the City-County Council desires to declare its intent to reimburse the Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the City-County Council hereby finds and determines that the funding approved by the Commission for a portion of the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance a portion of the costs of the Project will require the issuance, sale and delivery of one or more series of economic development tax increment revenue bonds in an aggregate combined principal amount not to exceed \$25,500,000; now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE  
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. It is hereby found, determined, ratified and confirmed that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, and the use of the net proceeds thereof by the Company to finance a portion of the Project (i) will result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near Marion County, Indiana.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the City-County Council or City Controller. In compliance with Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk of the City-County Council for public inspection.

SECTION 3. The City shall issue its Bonds in one or more series, any series of which may be taxable or tax-exempt for federal income tax purposes, in the maximum aggregate principal amount not to exceed Twenty Five Million Five Hundred Thousand Dollars (\$25,500,000), with a maximum term not to exceed eighteen (18) years and with a maximum interest rate not to exceed eight and one-half percent (8.5%) per annum, for the purpose of procuring funds to finance a portion of the Project, which Bonds will be payable as to principal and interest solely from incremental real property taxes derived from, together with personal property taxes attributable to the Company's site of operations in, the Allocation Area, upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 4. The Mayor and City Controller are authorized and directed to sell such Bonds to the purchaser or purchasers thereof at a price not less than 98.5% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed eight and one-half percent (8.5%) per annum, and with a final maturity no later than eighteen (18) years from the date of the issuance of any series of Bonds. A bond purchase agreement or a qualified entity purchase agreement in form and substance acceptable to the Mayor and the Controller (the "Purchase Agreement"), be, and hereby is, approved, and the Mayor and the Controller are hereby authorized and directed to execute and deliver the Purchase Agreement in form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance. If necessary or desirable in connection with the sale of the Bonds, the Mayor, the Controller and any other officer of the City are authorized to enter into a continuing disclosure undertaking agreement, in compliance with Rule 15c2-12 of the Securities and Exchange Commission, which will be in such a form as may be deemed necessary, appropriate or desirable by the Mayor, the Controller and any other officer of the City, with such to be conclusively evidenced by their execution thereof.

SECTION 5. The Mayor, the Controller and any other officer of the City are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Controller and any other officer of the City on the Bonds which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Controller and any other officer of the City on the Bonds may be facsimile signatures. The Mayor, the Controller and any other officer of the City are authorized to arrange for the delivery of such Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor, the Controller and any other officer of the City may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor, the Controller or any other officer of the City without further approval of this City-County Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 6. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Bonds and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 7. Subject to the provisions of Sections 5 and 14 of this Ordinance, if necessary or desirable, a Preliminary Official Statement of the City relating to the Bonds (the "Preliminary Official Statement"), in a form acceptable to the Mayor, is hereby (a) authorized and approved, together with such changes in form and substance as may be deemed necessary or appropriate by the Mayor pursuant to Sections 5 and 14 of this Ordinance, (b) authorized and approved, as the same may be appropriately confirmed, modified and amended pursuant hereto, for distribution as the Preliminary Official Statement of the City, (c) authorized to be deemed and determined by the Mayor on behalf of the City, as of its date, to constitute the "final" official statement of the City with respect to the Bonds to be offered thereby, subject to completion as permitted by and otherwise pursuant to the provisions of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), and (d) authorized and approved, consistent with the provisions of any bond purchase agreement and the SEC Rule, to be placed into final form and distributed and delivered to purchasers and potential purchasers of the Bonds offered thereby as the final official statement of the City, as of the date thereof, with respect to the Bonds (the "Official Statement").

SECTION 8. Subject to the obligations of the Company set forth in the Financing Agreement and the tax and arbitrage representation certificate of the Company to be executed upon the issuance of the Bonds, the City will use its best efforts to restrict the use of the proceeds of the Bonds in such a manner and to expectations at the time the Bonds are delivered to the purchasers thereof, so that they will not constitute "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, or to preserve any other desired tax status under the Code, if necessary. The Mayor and the Clerk, or any other officer having responsibility with respect to the issuance of the Bonds, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth

the facts, estimates and circumstances and reasonable expectations pertaining to the use of the Bond proceeds as of the date of issuance thereof.

SECTION 9. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the City, including without limitation its Economic Development Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation its Economic Development Commission, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any at them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Agreement and the issuance, sale and delivery of the Bonds.

SECTION 10. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 11. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 12. It is hereby determined that all formal actions of the City-County Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the City-County Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

SECTION 13. The Mayor and the Clerk are authorized to take all such further actions or to execute, attest and deliver such further instruments and documents in the name of the City as in their judgment shall be necessary or advisable in order fully to consummate the transaction and carry out the purposes of this Ordinance.

SECTION 14. The Mayor, the Controller and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute and deliver such further documents and to take such further actions as such person deems necessary or desirable to effect the purposes of this ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved. The Mayor or his designee is hereby authorized to enter into a project agreement with the Company, on terms and conditions acceptable to the Mayor, together with any all changes as may be necessary, desirable or appropriate, which shall be evidenced by his execution thereof.

SECTION 15. The City-County Council does hereby acknowledge that the Bonds may be purchased with the proceeds of bonds to be issued by The Indianapolis Local Public Improvement Bond Bank (the "Bond Bank Bonds"), and that the Bond Bank Bonds may be supported by one or more debt service reserve funds that will be subject to the provisions of IC 5-1.4-5-4 and Special Ordinance 67,85 of this City-County Council.

SECTION 16. Pursuant to IC 36-7-15.1-9, the City-County Council hereby approves, in all respects, the Amendatory Resolution and the Plan Amendments.

SECTION 17. The City-County Council hereby declares its official intent, to the extent permitted by law, to issue the Bonds in one or more series or issues, not to exceed the maximum aggregate principal amount authorized herein, and to reimburse costs of the Project consisting of the Expenditures from proceeds of the sale of such Bonds.

SECTION 18. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code 36-3-4-14.

The foregoing was passed by the City-County Council this \_\_\_\_\_ day of \_\_\_\_\_, 2010, at \_\_\_\_\_ p.m.

ATTEST:

\_\_\_\_\_  
Ryan Vaughn  
President, City-County Council

\_\_\_\_\_  
Melissa Thompson  
Clerk, City-County Council

Presented by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2010, at 10:00 a.m.

\_\_\_\_\_  
Melissa Thompson  
Clerk, City-County Council

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Gregory A. Ballard, Mayor